IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.4741 of 2004
Date of Decision : November 13, 2006.

Gurdip Singh ..... Petitioner

Vs.

Manoj Kumar ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.R.C.Setia, Senior Advocate
with Mr.Anish Setia, Advocate
for the petitioner.

Mr.Arun Palli, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed by the plaintiff against an order dated 16.09.2004 vide which the learned Additional District Judge, Patiala allowed the respondents to amend their written statement during the pendency of the first appeal before him. The plaintiff had filed a suit seeking eviction of the respondents from the demised premises. Much after the filing of the written statement before the trial court and even after the trial court decided the suit and passed the decree, the demised premises fell within the municipal limits as a result of notification issued by the State of Punjab. It is under these circumstances that the respondents moved an application for amendment of written statement to raise a legal issue that since the property had fallen within the

municipal limits during the pendency of the appeal, a suit for ejectment would not lie. It is this application which has been allowed and permission granted to the defendants to amend their written statement to raise this legal issue. It is against the aforesaid order that the present revision petition has been filed by the petitioner-plaintiff.

Mr.Setia, learned senior counsel appearing for the petitioner has contended on the strength of a judgment of the Hon'ble Supreme Court in the case of ***Shri Kishan @ Krishan Kumar etc. etc. vs. Manoj Kumar etc. etc.*** reported as ***1998 (1) PLR 593*** that the learned Additional District Judge fell in error in allowing amendment as the status of the parties had crystalized on the date of filing of the suit and it is on that date that the status would have to be determined. Any subsequent notification would not affect the rights of the plaintiff. He therefore submits that in this situation an amendment should not have been allowed. On the other hand Mr.Palli, learned counsel for the respondent states that at this stage only written statement has been permitted to be amended giving liberty to the defendant to raise this legal issue. In any case he submits that even on merits it has been consistently held that subsequent events can be taken into consideration and under almost similar circumstances a decision was rendered in favour of the proposition canvassed by him by a learned Single Judge of this Court in the case of ***Ram Narain and others vs. Ram Lal and others*** reported as ***2004 (1) HRR 124***. He further submits that the question as to whether the rights of the parties have crystalized as on the date of filing of the suit is a matter to be determined by the court on merits. At this stage the only question which is to be decided is as to whether or not the defendant should be allowed to raise this issue before the Lower Appellate Court.

After hearing learned counsel for the parties I do not find any merit in this revision petition. I am of the opinion that at this stage the defendant has only been granted a right to raise the issue that the property

during the pendency of the appeal has fallen within the municipal limits. The effect of this would necessarily be considered by the learned Additional District Judge. As to whether the rights of the parties had crystalized on the date of filing of the suit or subsequent events can be taken into consideration is a matter on merits which would be determined by the learned Additional District Judge on the basis of the arguments raised by the parties before him.

For the aforesaid reasons I find no merit in the present revision petition and the same is accordingly dismissed.

November 13, 2006 (P.S.Patwalia)
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